No. 21,523

In the United States Court of Appeals for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS, LOCAL UNION NO. 631, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, RESPONDENT

On Petition for Enforcement of an Order of the National Labor Relations Board

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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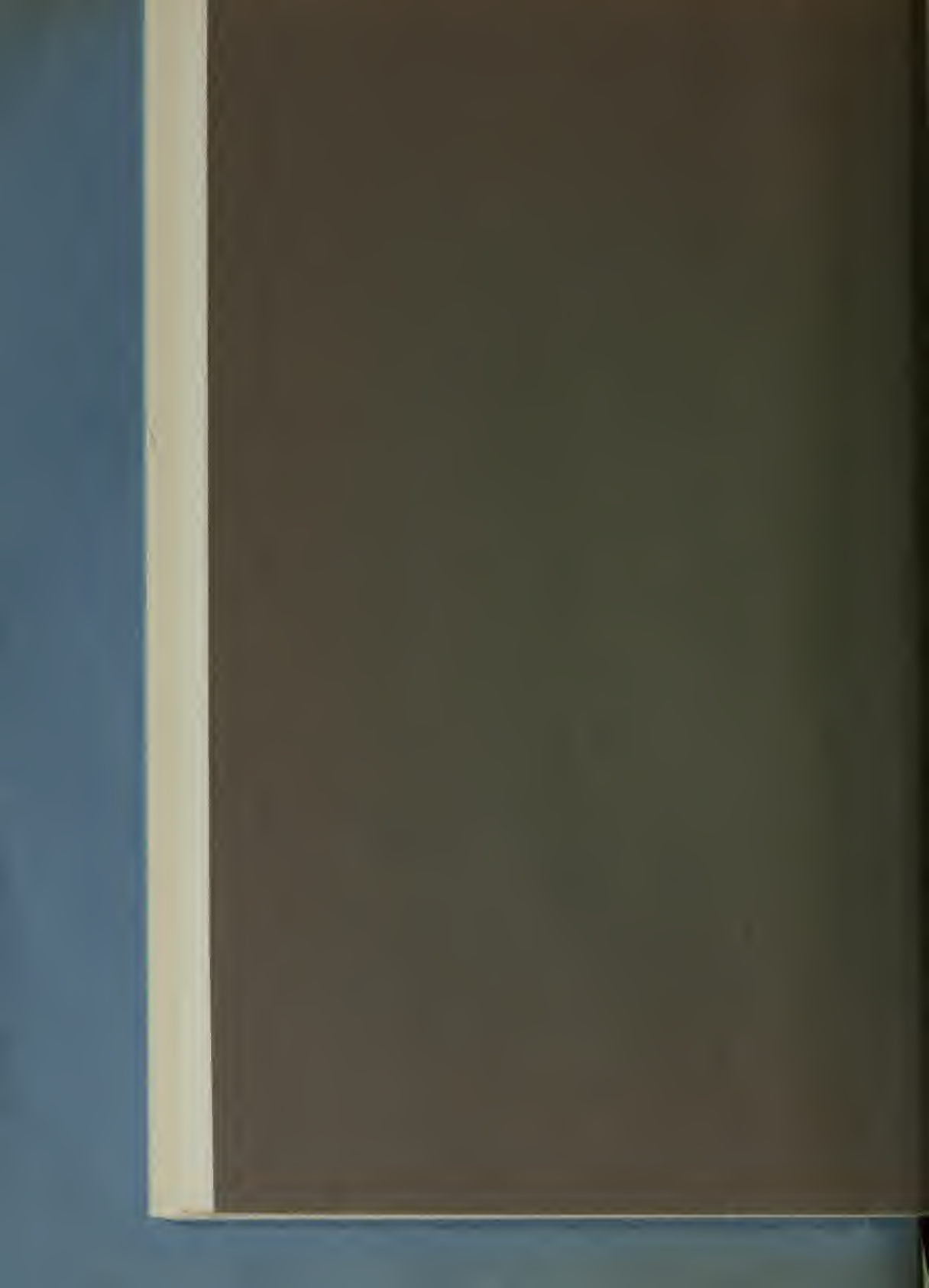

INDEX

AUTHORITIES CITED

Cases:

Cases—Continued Page

Statute:

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BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

JURISDICTION

This case is before the Court upon the petition of the National Labor Relations Board for enforcement of its order issued against respondent ("Teamsters") on April 12, 1966, pursuant to Section 10(c) of the National Labor Relations Act (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Sec. 151, *et seq.*). The Board's deci-

sion and order in the unfair labor practice proceeding (R. 57-58)[1] are reported at 157 NLRB 1621. The Board's earlier decision and determination of dispute in the underlying Section 10(k) proceeding (R. 73-84) are reported at 150 NLRB 504. This Court has jurisdiction of the matter, the unfair labor practices having occurred within this judicial circuit at the Nevada Test Site of the Atomic Energy Commission.

STATEMENT OF THE CASE

I. The Board's Findings of Fact

Briefly stated, the Board found that the Teamsters engaged in conduct proscribed by Section 8(b)(4)(i) and (ii)(D) of the Act,[2] with an object of forcing or requiring REECO to assign work in dispute to employees represented by the Teamsters rather than to employees represented by the International Brotherhood of Electrical Workers ("IBEW"). Earlier, in the Section 10(k) proceeding, the Board rendered an

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[1] References to the pleadings, the Board's decision and determination of dispute, the Board's decision and order, and other papers reproduced as "Volume I, Pleadings," are designated "R." References to the portions of the stenographic transcript of the Section 10(k) proceeding reproduced pursuant to Court Rule 10 are designated "Tr." The abbreviations "T. Exh.," "IBEW Exh.," "REECO Exh.," and "Bd. Exh." refer respectively to exhibits introduced at the 10(k) hearing by the Teamsters, International Brotherhood of Electrical Workers ("IBEW"), Reynolds Electrical & Engineering Company, Inc. ("REECO") and the Board. References preceding a semicolon are to the Board's findings; those following are to the supporting evidence.

[2] The pertinent statutory provisions are set forth in the Appendix, *infra*, pp. 39-40.

affirmative award of the disputed work to REECO's employees represented by the IBEW, thereby determining that the Teamsters' members were not entitled to the work.

A. *Background of the dispute*

Since 1951 the Atomic Energy Commission ("A.E.C.") has conducted nuclear testing at the Nevada Test Site ("N.T.S."). N.T.S. consists of an area in excess of 1500 square miles and is sometimes referred to as "Mercury," although in actuality Mercury is the headquarters and point of entry to N.T.S. from the city of Las Vegas. N.T.S. has been divided into administrative areas numbering more than 15 since 1961. During this recent period, Areas 3 and 9 have been principal centers of activity (R. 19-20; Tr. 742-743).

Reynolds Electrical and Engineering Co. Inc. ("REECO") has been prime contractor at N.T.S. since December 1952 and has performed various types of construction, support and service work in connection with the nuclear testing (R. 19; Tr. 1882).

1. *Agreements between the Teamsters and IBEW and the practice thereunder*

In 1942, the parent International unions of the disputing locals involved herein entered into an agreement dealing with their respective jurisdictions which provided in relevant part (R. 21; T. Exh. 6-B):

> It is further agreed that the operators of vehicles used for electrical construction work, maintenance work, or electrical repair work—that is,

> when such vehicles are used for transporting man or men and/or material to and from job, and said vehicle remains at jobsite with man or men in the performance of electrical work, and the operation of the vehicle is an integral part of this work—such operator comes under the jurisdiction of the INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS.
>
> It is understood and agreed that the equipment operated by electrical workers shall only be the truck carrying the line and maintenance crews, tools, etc., to and from the job, or the emergency car from electrical contracting shops carrying only tools and repair equipment for emergency work. Operation of all delivery equipment for the delivery of materials of all character, such as poles, pipes, transformers, cables, and electrical appliances, such as refrigerators, radios, etc., shall be the jurisdiction of the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS.

In 1952, a jurisdictional dispute between the Teamsters and IBEW arose at N.T.S. over the staffing of a warehouse and yard located at Mercury. This warehouse was used exclusively to store electrical materials. In addition, a dispute arose over the hauling of these materials from the warehouse to the points of use (R. 21; Tr. 1035-1037, 1693-1694, 2307, 2319-2320). William F. Carter, secretary-treasurer of the Teamsters and Ralph A. Leigon, business manager of the IBEW, attempted to resolve the dispute by applying the agreement set forth above (referred to in the record as the Greenbook Agreement). This Carter-

Leigon Agreement provided in relevant part (R. 21-22; T. Exh. 6-A):

> The mutual understanding as to the interpretation of the existing [Greenbook] agreement, copy of which is attached, between the two International Unions was determined as follows:
>
> *Paragraph #2*: Crew or Line Truck referred to in this paragraph shall be loaded by Warehousemen if available, or composite crew, at the start of the shift, and operated by I.B.E.W. men. All other materials required during the shift other than first loaded as above, shall be requested from the warehouse or yard and delivered by vehicle operated by Teamsters.
>
> It was further mutually agreed that a composite crew of Warehousemen and Electricians shall work together in the Warehouse storing electrical material exclusively. One to one ratio between the two crafts shall be maintained as equally as possible.

Although not a party thereto, REECO abided by the terms of this agreement. In the warehouse in which only electrical materials were stored, REECO assigned the work of receiving, storing and loading these materials to a composite staff of employees represented by the Teamsters and IBEW (R. 76; Tr. 1816).[3] With respect to the hauling of electrical ma-

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[3] Within a year, this provision for composite staffing became moot because the warehouse storing only electrical materials was converted to a mixed materials warehouse where the Teamsters had exclusive jurisdiction (R. 76; Tr. 1816-1817, 2224).

terials and supplies from warehouses[4] to points of use or to forward compounds,[5] REECO assigned this work, except for the first load of the shift, to the Teamsters. The "first load" hauling was assigned to IBEW members (R. 20, 22; Tr. 1063-1064, 1824, 2429).

2. *The development of forward compounds*

Between 1952 and October 1958, the nuclear testing at N.T.S. was conducted above ground. A moratorium on all nuclear testing was imposed from the latter date until September 1961. From September 1961 on, all testing has been conducted underground, usually in wellholes and occasionally in tunnels (R. 19; Tr. 570, 1277-1280).

This change in the method of testing produced a change in the nature of REECO's operations. During the period of atmospheric testing, the wide-range destructive effect of the tests precluded the development of any permanent work buildings near the testing. Most materials were stored and fabricated in warehouses, hauled to the point of utilization and used immediately (Tr. 570, 1146-1147, 1362, 1380-1381). Some electrical work was performed in portable shacks in the forward areas which were moved

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[4] By 1962 REECO had developed five permanent warehouses storing mixed materials and staffed by Teamsters (R. 20; 10(1) Tr. 57-59). ("10(l) Tr." references are to portions of the stenographic transcript of the Section 10(l) proceeding introduced at the Section 10(k) hearing as Board Exhibit 4).

[5] See pp. 7-8, *infra*.

prior to the nuclear tests (R. (D&D 9); Tr. 2489-2494, 2531-2532, 2541). With the termination of atmospheric testing, however, REECO developed forward staging compounds proximate to the point of testing. These forward compounds are, in turn, subdivided into smaller craft compounds occupied by a specific craft. The craft compounds are sometimes fenced for security reasons and for the preservation of materials (R. 20; Tr. 404, 10(l); Tr. 82). In addition to trailer offices for area and craft superintendents, the forward compounds contain facilities for the fabrication or assembly of materials and structures prior to their transportation for use in well-holes and tunnels (R. 20; Tr. 349-352).

As stated *supra*, p. 6, except for the "first-load" of the shift, Teamsters haul electrical materials from one of REECO's five permanent warehouses to the forward electrical compounds. These materials are always delivered pursuant to a specified work order and are unloaded by IBEW members at the electrical compounds (R. 20; Tr. 360-363, 403, 582). Laborers, and if a forklift is needed, operating engineers, sometimes assist in the unloading (R. 20; Tr. 2532-2533, T. Exh. 13, Finding of Fact 2). Eighty to 90 percent of these materials are fabricated in some manner at the compound (R. 20; Tr. 408, 594). For example, in an electrical compound located in Area 3, coaxial cable is spliced and fixtures are attached to the cable ends (R. 20; Tr. 353-354). Following a brief storage period, generally less than two or three months, the materials are transported a short distance from the electrical compound to the point of use

(Tr. 653-654, 777). In the case of Area 3, there are approximately 25 well-holes within a three mile radius of the compound (R. 20; Tr. 356-357). No inventory is kept of the materials stored in these forward electrical compounds (Tr. 404-405).

B. *The work in dispute*

The dispute involves two kinds of work. The first involves the staffing of the forward electrical compounds. The men assigned there unload electrical materials and supplies and check, tally, place or "spot" these materials within the compound. This issue is referred to hereinafter as the "composite staffing" dispute.

The second matter in dispute involves the subsequent loading of electrical materials and supplies at the forward electrical compound and the hauling of these materials to the point of utilization. This issue will be referred to as the "hauling to point of use" dispute.

C. *The Teamsters claim the disputed work and attempt to compel REECO's assignment of the work to its members*

In November 1963, Teamster officials Dale Thompson, William Carter and Joe Carter protested to REECO officials that electricians represented by the IBEW were improperly hauling electrical materials from the forward electrical compounds to the points of use. The Teamsters claimed that the IBEW members' use of flat rack trucks for this purpose constituted a violation of the Carter-Leigon and Greenbook

agreements. On November 18, 1963, Carter wrote to REECO listing a number of flat racks used by the electricians in Areas 3 and 9 and threatening "to take the necessary steps to protect our rightful jurisdiction" (R. 22; T. Exh. 10, Tr. 789-792, 1027, 1029, 1417-1419, 1682-1683, 10(l) Tr. 83-85, 91).[6]

In the ensuing months, meetings between officials of REECO and the Teamsters failed to resolve the differences between the parties and Carter decided to submit some of the issues to the Joint Conference Board ("AGC Board")[7] (R. 23; T. Exh. 11). The IBEW was not a party to the proceeding (R. 30). On April 1, 1964, REECO officially answered Carter's letter of November 18, 1963, denying that the IBEW's members' hauling of electrical materials in flat rack trucks violated the Carter-Leigon and Greenbook agreements and concluding that the "accusation

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[6] About this time the Teamsters also protested REECO's use of a "non-manual clerk" in an Area 9 compound containing mixed materials. This dispute, which is not relevant to the instant dispute involving exclusively electrical compounds, produced a letter by Carter to REECO official C.E. Lemon on January 8, 1964, and a visit by Carter and Lemon to Area 9 in February or March. Though Lemon promised that a Teamster receiving clerk would be assigned to work in Area 9, it does not appear that a change in work assignment occurred (R. 22-23; REECO Exh. 1, Tr. 2039, 2042, 2050).

[7] The Teamsters' submission to the AGC Board was based on the 1962 Associated General Contractors labor agreement (T. Exh. 5) to which the Teamsters and REECO were signatories. Article V of the agreement provided procedures for settlement of grievances and disputes. IBEW was not a signatory to this labor agreement and did not participate in the proceedings before the AGC Board (R. 23).

of jurisdictional violation is unfounded" (R. 23; T. Exh. 12).

About April 20, 1964, Carter and Lou Groeniger, a representative of the A.E.C., toured N.T.S. As they drove up to an electrical compound in Area 17, Carter observed eight electricians loading a pickup truck. In addition, two flat rack trucks driven by Teamsters were waiting to be unloaded. Carter immediately contacted REECO representatives Cook and Taylor and insisted that there should be an equal number of Teamsters and electricians in the compound loading and unloading materials. Carter argued that the electrical compound was a warehouse within the meaning of the Carter-Leigon Agreement and that, accordingly, REECO was required to utilize composite crews for these operations. Taylor disagreed, contending that the electrical compound was part of the job site (R. 23-24; Tr. 2061-2068). Carter responded by instructing the Teamster drivers of the two flat rack trucks to return their loads to the warehouse. As Carter testified: "[The two drivers] were going to stay back there until such a time as they put a composite crew to unload, and I told [Taylor] if he fired one man that I was going to take the rest of them home" (R. 24; Tr. 2066).

That evening Carter instructed his business agents to order the cessation of Teamster deliveries to all forward compounds (R. 8).[8] The following day, April 21, Carter met with REECO officials Lemon and Crockett at the offices of A.E.C. Representative

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[8] See *infra*, p. 35, for a discussion of the Board's resolution of conflicting evidence in support of this finding.

Groeniger. Carter stated that the Teamsters' actions were intended solely to force REECO's compliance with the Carter-Leigon Agreement, and pending such compliance, the Teamsters would not deliver materials to the electrical compounds. The Teamsters and REECO had been unable to settle any differences for "quite some time," Carter added, and the Teamsters "felt that the only way of bringing the matter to a head was to take drastic action . . ." (R. 25; Tr. 2071-2073).

On April 22, Carter sent a telegram to the Joint Council of Teamsters and Teamster International officials requesting the right to strike REECO. The telegram read in part (R. 28-29; T. Exh. 41):

> REECO PRIME CONTRACTER [sic] FOR AEC TEST SITE IS IN VIOLATION OF THE AGC MASTER AGREEMENT THEY HAVE REFUSED TO CORRECT THE VIOLATIONS CONSTANTLY USING PEOPLE OTHER THAN TEAMSTERS TO HANDLE AND HAUL MATERIAL. . . . TIME WILL NOT PERMIT THE PROPER PROCEDURES FOR REQUESTING STRIKE SANCTION.

Commencing April 24, Teamster drivers refused to deliver or unload materials at the forward compounds (R. 25; Tr. 269, 405-407). As REECO's warehousing supervisor, Williams Boggs, testified, Teamster steward Pat Gwinn informed him on April 27 that the Teamsters "would not deliver material to any compound where there was not a Teamster clerk to receive it, or a Teamster forklift operator to unload it" (R. 25; 10(l) Tr. 138-139). Moreover, these refusals were not limited to materials utilized by elec-

tricians; Teamster drivers also ceased deliveries intended for plumbers, carpenters, laborers, drillers and ironworkers (R. 25-26; Tr. 270, 282-288, 10(l) Tr. 139-140). REECO sought to stop the refusals on April 27 by warning ten Teamster drivers of possible disciplinary action if they returned to the warehouse with loaded trucks. Nevertheless, each driver returned with a loaded truck (R. 26; Tr. 276-279).

The following morning, April 28, Carter met with REECO officials who promptly advised him that further refusals by Teamster drivers would result in disciplinary action against the employees involved. Carter answered that he had instructed the drivers not to unload materials in the forward compounds unless Teamsters unloaded these vehicles. In this statement, Carter failed to restrict his remarks to the electrical compounds (R. 26-27; Tr. 307-310, 377-378, 392-393). When Carter noted that the AGC Board was meeting in executive session at 2:00 p.m. and that the AGC Board deliberations might assist in resolving their dispute, the parties adjourned until late in the afternoon (R. 27; Tr. 309). When they met again, Carter reported that the AGC Board had "ruled against Reynolds." The meeting adjourned to give REECO's officials an opportunity to study the AGC Board's conclusions (R. 27; Tr. 310).

The Teamsters' refusals to deliver and unload materials ceased on April 29 (R. 10; Tr. 288). The AGC Board's award officially issued on April 30. The AGC Board first recited the positions of the two parties (R. 35; T. Exh. 13, page 1):

> Mr. Carter stated that it was the Union's position that the Company was in violation of the Agreement . . . because I.B.E.W. personnel were being used to perform duties involving warehousing, handling and transporting materials from area yards to job sites. . . . Messrs. Goodwin and Hawley [for REECO] contended that the area yards were properly to be considered as part of the job site and that once material was delivered to such yards it then was to be handled and transported by the craft that would make the installation.

The AGC Board's conclusions reflected a partial agreement with Carter's position. Thus, with respect to the "hauling to point of use" dispute (see p. 8 *supra*) the AGC Board held that REECO's assignment of work conflicted with area practice and therefore violated the labor agreement to which REECO and the Teamsters were signatories (T. Exh. 13, Conclusion 2; see T. Exh. 5, Article III F for the contract provision specifically involved). However, Carter failed to prevail on the "composite staffing" dispute. As the AGC Board stated (T. Exh. 13, page 2, para. 6):

> Management representatives refused to find a violation of the agreement insofar as the warehousing function was concerned because they took the position that since electrical fabrication was being performed at the various yards visited these locations could properly be considered as electrical shops rather than as warehouses and it was in keeping with trade practice in the area

that such shops be manned by electrical personnel.[9]

On May 1, one day after the issuance of the AGC Board award, Carter met with REECO officials. In Carter's view, the AGC Board had held that "all forward compounds were to be treated as warehouses, that [REECO was] to install warehouse clerks and that all hauling from these compounds were to be done by Teamsters" (R. 27; 10(l) Tr. 150-151). When REECO Representative Lemon stated that the award applies only to electricians, Carter answered: "No, this applies to everybody" (R. 27; 10(l) Tr. 151). In response, REECO's officials asserted that the award was "unclear," that a clarification would therefore be sought from the AGC Board, and that pending such clarification no change in work assignment would occur (R. 27; 10(l) Tr. 150, 153).

The AGC Board's certification issued on May 6 stated in part: "The award . . . applies solely to work being performed by the Electricians and no other craft" (R. 27; T. Exh. 15).

Meanwhile, on May 4, Leigon, business manager of IBEW, had requested a meeting of the Joint Conference Committee ("NECA Committee")[10] for the pur-

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[9] The AGC Board refused to recognize the Carter-Leigon Agreement because the Teamsters and the IBEW had failed to follow certain procedures necessary for recognition of the agreement under various sections of the "master" labor agreement (T. Exh. 13, Finding of Fact 7, Conclusion 1).

[10] REECO was a signatory to a contract between the IBEW and the Southern Nevada Chapter of the National Electrical Contractors' Association (IBEW Exh. 4). The NECA Com-

pose of investigating "the proper assignment of the handling and moving of electrical material . . ." (IBEW Exh. 2-B). Following this investigation, the NECA Committee concluded on May 13 that REECO's assignment of the work in dispute was proper. REECO's compliance with the AGC Board's award, the NECA Committee further concluded, would violate the IBEW-REECO contract and would not conform to "the long-established trade practice in this area and the past practice of the Nevada Test Site" (IBEW Exh. 2-A).

On May 11, REECO's refusal to reassign the handling and moving of electrical material became manifest to the Teamsters. Accordingly, Teamster business agents Joe Carter and Benny Batista went to REECO's main warehouse to stop Teamsters from issuing materials or hauling to the forward compounds (R. 28; Tr. 2110-2112). About this time, REECO's assistant warehouse superintendent, Carl Lavender, instructed a Teamster foreman to load and dispatch electrical materials to Area 3. Though warned of possible disciplinary action against him, the foreman decided to follow the contrary instructions of Teamster steward Merlyn Gile. Thereupon, supervisory personnel loaded and dispatched the materials (R. 28; Tr. 289-290).

Just prior to the noon lunch hour, Business Agent Batista arrived and instructed the Teamsters to sit

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mittee is the body charged with adjudicating unresolved disputes between IBEW and the employer (IBEW Exh. 4, Article 1, Sec. 6).

down and do nothing, "not even answer the phone," upon their return from lunch. These employees then staged a sitdown strike of 1½ to 2½ hours (R. 28; Tr. 290-291). At about 2:30 p.m., REECO informed the employees that they were "off the payroll." The employees soon left the premises (R. 28; Tr. 291).

The following morning, May 12, a Teamster picket line formed at the entrance to N.T.S. and all Teamster employees remained away from work. A federal district court enjoined the picketing on May 26 (R. 28; Tr. 292, 294-295).[11]

D. *Proceedings before the Board*

On May 5, 1964, REECO filed a charge with the Board which was amended on May 11 alleging that the Teamsters had violated Section 8(b)(4)(D) of the Act, the section involving "jurisdictional disputes" (R. 3-7). Upon investigating the charge and finding reasonable cause to believe that Section 8(b)(4)(D) of the Act had been violated, the Board, under the provisions of Section 10(k) of the Act, held a hearing on the merits of the underlying work dispute. On December 16, 1964, the Board issued its

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[11] On May 21, 1964, the Teamsters filed a complaint in the United States District Court for the District of Nevada seeking enforcement of the AGC Board's award and declaratory relief based on the Teamsters' contract with REECO. REECO then answered and the IBEW and NLRB intervened. On March 9, 1965, the Court issued an order staying the proceeding pending the instant NLRB case and any subsequent judicial review in the court of appeals (R. 19; General Counsel's Exhibit ("G.C. Exh.") 6F, introduced into the unfair labor practice hearing before the Trial Examiner).

decision and determination of dispute finding that the disputed work should be assigned to employees represented by the IBEW (R. 83). Having made this finding, the Board further held that the Teamsters were not lawfully entitled to force or require REECO to assign the work to employees represented by the Teamsters (R. 84).

The Teamsters informed the Board, by letter dated January 4, 1965, that they would not voluntarily comply with the Board's determination of the work dispute (G.C. Exh. 5). Thereupon, the General Counsel of the Board issued an unfair labor practice complaint alleging that the Teamsters had violated Section 8(b)(4)(D) of the Act (R. 7-11). At the hearing before the Trial Examiner, the parties stipulated that the record of the Section 10(k) proceeding be introduced and received into the record of the unfair labor practice proceeding (Transcript in unfair labor practice hearing, pp. 9-10).

II. The Board's Conclusions and Order

The Board, in agreement with the Trial Examiner, concluded that the Teamsters refused to deliver materials to forward compounds manned by employees of REECO represented by the IBEW and by other labor organizations, struck, threatened to strike, and induced and encouraged employees of REECO to engage in a strike or a concerted refusal to perform services—all with an object of forcing or requiring REECO to staff forward electrical compounds with employees represented by the Teamsters, thereby either causing REECO to assign Teamster employees

on a ratio of one to one with other craftsmen manning said electrical compounds or to assign said Teamster employees to the exclusion of employees represented by other craft unions. The Board further concluded that another object of the Teamsters' conduct was to force or require REECO to assign to employees represented by the Teamsters the work of driving vehicles transporting electrical supplies from forward electrical compounds to points of use. Having engaged in said conduct with these objects, the Teamsters violated Section 8(b)(4)(D) of the Act (R. 37-38, 57).

The Board's order requires the Teamsters to cease and desist from the unfair labor pratices found with respect to REECO or any other person. Affirmatively, the Board's order directs the Teamsters to post appropriate notices (R. 38-39, 58).

ARGUMENT

I. Introduction—The Statutory Framework and Standard of Judicial Review

Section 8(b)(4)(i)(ii)(D) of the Act, in relevant part makes it an unfair labor practice for a labor organization or its agents:

> (i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce,

or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is:

* * * *

(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work:

Section 8(b)(4)(D) is supplemented by Section 10(k) which provides:

> Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4)(D) of section 8(b), the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed.

These sections render unlawful strikes or inducements to strike aimed at forcing the reassignment to employees in one labor organization of work already assigned to members of another labor organization.

Thus, a violation of Section 8(b)(4)(i) and (ii)(D) presumes two elements: (1) the labor organization must, under subsection (i), strike, or induce or encourage employees to strike or refrain from working and, under subsection (ii), must "threaten, coerce, or restrain" any person engaged in commerce; and (2) an object of this conduct must be to force an employer to reassign work from employees in one labor organization to those in another. There is no dispute in this case about the Teamsters having resorted to conduct falling within the proscription of Section 8(b)(4)(i) and (ii)(D). Rather, the principal issue concerns the propriety of the Board's determination of the jurisdictional dispute in the Section 10(k) proceeding.

Construing Section 10(k), the Supreme Court held in *N.L.R.B.* v. *Radio and Television Broadcast Engineers Union, Local 1212*, 364 U.S. 573, (hereafter "*Local 1212*") that the Board is required to decide jurisdictional disputes on their merits. The Supreme Court stated (364 U.S. at 579):

> We agree with the Second, Third and Seventh Circuits that § 10(k) requires the Board to decide jurisdictional disputes on their merits and conclude that in this case that requirement means that the Board should affirmatively have decided whether the technicians or the stage employees were entitled to the disputed work. . . . This language [of Section 10(k)] indicates a congressional purpose to have the Board do something more than merely look at prior Board orders and certifications or a collective bargain-

> ing contract to determine whether one or the other union has a clearly defined statutory or contractual right to have the employees it represents perform certain work tasks. For, in the vast majority of cases, such a narrow determination would leave the broader problem of work assignments in the hands of the employer, exactly where it was before the enactment of § 10(k)—with the same old basic jurisdictional dispute likely continuing to vex him, and the rival unions, short of striking, would still be free to adopt other forms of pressure upon the employer.

The Supreme Court recognized that the effect of its holding would be to force the Board to exercise under Section 10(k) "powers which are broad and lacking in rigid standards to govern their application," but the Court expressed confidence that the Board, with its "long experience in hearing and disposing of similar problems," and with "a knowledge of the standards generally used by arbitrators, unions, employers, joint boards and others in wrestling with this problem," would be able to meet its responsibilities 364 U.S. at 583.[12]

In following the Supreme Court's mandate, the Board has recognized that there are no rigid rules to govern its determination, but rather that Section 10

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[12] The Court said further that "administrative agencies are frequently given rather loosely defined powers to cope with problems as difficult as those posed by jurisdictional disputes and strikes. It might have been better, as some persuasively argued in Congress, to intrust this matter to arbitrators. But Congress, after discussion and consideration, decided to intrust this decision to the Board." 364 U.S. at 583.

(k) is to be given content through the empiric process of administration. Accordingly, in *International Association of Machinists, Lodge 1743 (Jones Construction Co.)*, 135 NLRB 1402, a case coming to the Board shortly after the *Local 1212* decision, the Board adopted the following approach to the task of specifically rendering affirmative awards in jurisdictional dispute issues (135 NLRB at 1410-1411):

> At this beginning stage in making jurisdictional awards as required by the Court, the Board cannot and will not formulate general rules for making them. Each case will have to be decided on its own facts. The Board will consider all relevant factors in determining who is entitled to the work in dispute, e.g., the skills and work involved, certifications by the Board, company and industry practice, agreements between unions and between employers and unions, awards of arbitrators, joint boards and the AFL-CIO in the same or related cases, the assignment made by the employer, and the efficient operation of the employer's business. This list of factors is not meant to be exclusive, but is by way of illustration.

As such Section 10(k) determinations come before the courts of appeals for review, the governing standard of review must necessarily be whether or not the Board has abused its discretion—that is, whether the Board has been arbitrary or capricious—in making a particular work assignment. This is implicit in the Supreme Court's emphasis in *Local 1212* that Congress has, in Section 10(k), committed to the Board a task which necessarily involves a wide degree of

discretion and expertise in an area where the Board's "powers . . . are broad and lacking in rigid standards to govern their application." 364 U.S. at 583. Accord: *N.L.R.B.* v. *International Longshoremen's & Warehousemen's Union; and Locals 6, 10, 34, 54, and 91, etc.*, 378 F. 2d 33, 35-36 (C.A. 9), pet. for cert. pending, 36 Law Week 3117; *N.L.R.B.* v. *Local 676, International Brotherhood of Teamsters, etc.*, 376 F. 2d 3 (C.A. 3); *New Orleans Typographical Union* v. *N.L.R.B.*, 368 F. 2d 755, 761-765 (C.A. 5); *N.L.R.B.* v. *Des Moines Electrotypers Union No. 84*, 291 F. 2d 381, 388 (C.A. 8).

We submit that the Board's determination herein, awarding the disputed work to employees represented by the IBEW, is reasonable and should be affirmed.

II. The Board's Determination in the Section 10(k) Proceeding That Employees Represented by IBEW Are Entitled to Perform the Work in Dispute Is Neither Arbitrary Nor Capricious

A. *The composite staffing dispute*

Consistent with its decision in *Jones Construction Co., supra*, the Board weighed several factors in determining which of the competing groups of employees should be assigned the work of unloading, checking, tallying and placing electrical materials within the forward electrical compounds. Initially, the Board considered and rejected the Teamsters' contention that the Carter-Leigon Agreement awarded the work to the Teamsters (R. 78-79). More specifically, the Board concluded that the forward electrical compounds were not "warehouses" within the meaning of

the Carter-Leigon Agreement and accordingly that the Agreement's requirement of "one to one" composite staffing was inapplicable to the dispute herein.[13] As the Board noted, the record shows that when the Agreement was signed in 1952, there existed one warehouse used exclusively for the storage of electrical materials (R. 78-79; Tr. 1694, 1798, 2283). Moreover, because of the atmospheric testing, no forward electrical compounds existed at that time (p. 6, *supra*). The Board concluded, therefore, that the parties' use of the word "warehouse" in the Carter-Leigon Agreement (p. 5, *supra*) referred only to the one electrical warehouse in existence in 1952 (R. 78-79). In addition, the record shows that the Teamsters apparently agreed with this interpretation of the term "warehouse" because they failed to protest the absence of composite staffing in the forward electrical compounds until April 1964, at least three years after the creation of the compounds in their present form (R. 79; 10(l) Tr. 39-40, Tr. 790-791). Cf. *New Orleans Typographical Union* v. *N.L.R.B.*, *supra*, 368 F. 2d at 763-764.

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[13] The Board dismissed the contention of the Teamsters Union that its demand for one-to-one staffing with the IBEW members did not constitute a request for the reassignment of work from IBEW employees to Teamsters. As the Board reasonably concluded, the Teamsters could hardly assume that REECO would be willing to double the work force needed; the Teamsters must have contemplated, therefore, that their demand would cause IBEW members to lose jobs (R. 77). See *N.L.R.B.* v. *Local 1291, International Longshoremen's Association*, 345 F. 2d 4, 9-10 (C.A. 3), cert. denied, 382 U.S. 891; *International Typographical Union*, 121 NLRB 793, 799.

The nature of the forward electrical compounds provides further support for the Board's conclusion. As was described above p. 7, materials are always delivered to the forward electrical compounds pursuant to specific work orders.[14] No inventory is kept of these materials and 80 to 90 percent of them undergo some type of fabrication.[15] The materials rarely remain in the compounds more than two or three months before their delivery to points of use, usually a wellhole within a few miles of the compound.[16]

The Board also considered other factors in rendering an affirmative award of the composite staffing work to IBEW members. The record shows that IBEW employees have always done this work at N.T.S., in the nearby area and in the industry (R. 78; Tr. 217-218, 446, 450, 584-585, 995-1000, 1137)). Moreover, it appears that materials are generally unloaded at the compounds for no more than one or two hours each day. It is more efficient, therefore, for IBEW employees, whose normal pre-

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[14] As is customary in the construction industry, materials are ordered in amounts which exceed requirements by 5 to 10 percent because "nothing comes in exact quantities you need it in" (R. 20-21; Tr. 487).

[15] Though the compounds are sometimes fenced, this is done to preserve the materials and for security reasons (*supra*, p. 7).

[16] As the Board noted, the points of use are relatively proximate to the compounds when compared with the size of N.T.S. (in excess of 1500 square miles) and the occasional distances of 25 to 35 miles between permanent warehouses and the wellholes (R. 79).

fabrication work is done nearby, to unload and place the materials (R. 78; Tr. 431-432, 448, 502, 2474).

Finally, the reasonableness of the Board's determination is shown by the decisions of the two arbitral entities in this case. Both the NECA Committee and the AGC Board considered the Teamsters' demand to have REECO reassign the "composite staffing" work. As stated above, pp. 14-15, the NECA Committee ruled that a change in the present assignment to IBEW would violate the IBEW-REECO contract and would not conform to the previous practice at N.T.S. and in the area. And in the AGC Board proceeding, the Teamsters' claim was rejected by the AGC Board's management representatives who concluded: ". . . since electrical fabrication was being performed at the various yards visited these locations could properly be considered as electrical shops rather than as warehouses and it was in keeping with trade practice in the area that such shops be manned by electrical personnel" (pp. 13-14, above).[17] In sum, the Board properly weighed the relevant factors and reasonably awarded the staffing work to IBEW employees.

B. *The hauling to point-of-use dispute*

In awarding the work of hauling electrical materials from the forward compounds to their point

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[17] The Board also concluded that REECO's separate contracts with each of the two unions failed to shed light on the dispute. In addition, the record did not establish the superiority of either group of employees with respect to the skills involved in the disputed work (R. 78).

of use by IBEW members, the Board considered REECO's previous practice, the Carter-Leigon and Greenbook agreements, the contracts between the Teamsters and REECO and the IBEW and REECO, the arbitration determinations, the skills and efficiency of the competing groups of employees and a previous resolution by REECO of a dispute at an area known as the BJY.

The record is clear that since the commencement of underground testing in 1961 and the concomitant development of forward compounds, REECO has always assigned this disputed work to employees represented by the IBEW (R. 80-81; Tr. 420-421, 585, 1930-1932, 1935, 2490-2491, 2496-2499, 2533-2534). Although REECO's contracts with the two unions contained no clear-cut assignment of the work, the Board found that the Carter-Leigon and Greenbook agreements contained relevant guidelines. In essence, they provided that the Teamsters have jurisdiction over the delivery of materials from points outside of the jobsite to the first drop on the site; the IBEW employees were given the right to drive vehicles, remaining within the confines of the jobsite, which are used for the transportation of materials from one point to another during the electricians' work. The issue thus becomes whether the forward compounds may reasonably be considered a part of the jobsite. We submit that the evidence discussed above (p. 25) amply supports the Board's conclusion that the compounds are part of the jobsite. Thus, the electrical materials are always delivered to the compounds pursuant to a specific work order, and 80 to 90 of such

materials are fabricated at the compounds. And these materials remain at the compounds for a brief period, generally less than two or three months, before being transported to a wellhole a short distance away. At the very least, the Board was not arbitrary in its interpretation of the term "jobsite" as used in the Carter-Leigon and Greenbook agreements.

The decisions of the two arbitration tribunals conflicted. While the NECA Committee concluded that terminating REECO's assignment of the hauling work to IBEW members "would violate the long-established trade practice in this area," the AGC Board concluded the opposite with respect to the same area practice.[18] The Board found that no area practice existed and that N.T.S. presents a unique situation. Indeed, the record contains no evidence of a practice at construction projects of comparable size or where comparable work is being performed (R. 80; Tr. 466-468, 657, 659-660).

Although the Board found that either group of employees possessed the skills necessary to perform the disputed work, it further concluded that it was more efficient and practicable for the IBEW members to haul the electrical materials to the point of use. For example, after such hauling, the electrician could join

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[18] The AGC Board found that REECO's award of the work to the electricians constituted a violation of Article III F of the contract between REECO and the Teamsters (T. Exh. 13, Conclusion 2, T. Exh. 5, Article III F.). However, as the Board noted, Section III, Subparagraph D of the same contract precluded the AGC Board from resolving a jurisdictional dispute, as in the instant case (R. 35).

the crew at work installing the delivered materials (R. 83; Tr. 806, 810, 756). Finally, the Board properly rejected as inapposite the Teamsters' reliance on REECO's resolution of the BJY dispute in 1957. The record shows that the BJY was an area where supplies were stored for general use and not thus pursuant to specific work orders. Since this storage area was utilized during the period of atmospheric testing, it was of necessity located many miles from the testing and point of use of the materials. Moreover, no fabrication of materials was performed there (R. 82-83; Tr. 157, 166, 1377, 1827-1828, 1891-1892).

On the basis of the foregoing, we submit that the Board was not arbitrary or unreasonable in finding, as it did, (1) that the Teamsters were not entitled to composite staffing at the electrical compounds, and (2) that electricians represented by IBEW were entitled to perform the work of driving vehicles transporting electrical supplies from the electrical compounds to the point of use. Accordingly, the Board properly assigned the disputed work to electrician employees represented by IBEW.

C. *The Teamsters' defenses are without merit*

Before the Board, the Teamsters relied on the existence of contract rights allegedly supporting their claim to the disputed work, and argued that by virtue of their filing in the United States District Court of an action seeking enforcement of the AGC Board's award and declaratory relief based on their contract with REECO, the "District Court had primary jurisdiction to determine whether or not such claimed con-

tractual rights existed, and their meaning and applicability to the current work assignment dispute" (R. 81 para. 18 (c, d)). In other words, the Teamsters argue, the mere existence of the AGC Board's award favoring the Teamsters, the alleged contractual rights and the pendency of the District Court action deprived the Board of jurisdiction to proceed with its statutory mandate under Section 10(k).

The Act and the applicable authorities compel rejection of the Teamsters' contention. In addition to the words of Section 10(k) discussed above (pp. 20-21), Section 10(a) provides that the Board's power to prevent unfair labor practices "shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise. . ." As the Board has stated in language quoted by the Supreme Court: "There is no question that the Board is not precluded from adjudicating unfair labor practice charges even though they might have been the subject of an arbitration proceeding and award. Section 10(a) of the Act expressly makes this plain, and the courts have uniformly so held." *International Harvester Co.*, 138 NLRB 923, 925-926 (quoted in *Carey* v. *Westinghouse Electric Corp.*, 375 U.S. 261, 270-271). In the *Carey* case the Supreme Court recognized that controversies may arise in which the Board and arbitrators have concurrent jurisdiction.[19] Although this overlapping jur-

[19] In *Carey*, IUE claimed that certain employees represented by another union were performing work which should have been performed by employees represented by IUE. 375 U.S. at 262.

isdiction can lead to inconsistent determinations, the Court expressed no doubt as to the proper resolution of such a clash (375 U.S. at 272): "Should the Board disagree with the arbiter, . . . the Board's ruling would, of course, take precedence; and if the employer's ruling had been in accord with that ruling, it would not be liable for damages under § 301 . . . . The superior authority of the Board may be invoked at any time."

Clearly, therefore, the pending District Court action did not forclose the Board from fulfilling its statutory duty to adjudicate the jurisdictional dispute.[20] Accord: *New Orleans Typographical Union* v. *N.L.R.B.*, 368 F. 2d 755, 767 (C.A. 5); *Carey* v. *General Electric Co.*, 315 F. 2d 499, 509 (C.A. 2); see also *International Brotherhood of Firemen and Oilers* v. *International Association of Machinists*, 338 F. 2d 176, 178-179 (C.A. 5).

Nor, contrary to the Teamsters' contention, did the intervention of the IBEW in the District Court proceeding constitute an agreed upon method "for the voluntary adjustment" of the "hauling to point of use" dispute within the meaning of Section 10(k), thereby depriving the Board of jurisdiction to decide

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[20] The Teamsters emphasize (R. 5, 6-7 paras. 15-17, 18(c)) that the filing of the complaint in the District Court occurred prior to the noticing of the Section 10(k) hearing by the Board's Regional Director. Though the Supreme Court's statement that the Board's superior authority may be invoked at any time demonstrates the irrelevance of which proceeding commenced first, it to be noted that REECO's charge was filed with the Board on May 5, 1964, weeks before the filing of the District Court action on May 21.

this issue (R. 68, para. 18(e)). The original Teamster complaint, provoking intervention by the IBEW, sought enforcement of the AGC Board's award of this work to the Teamsters. Since the IBEW had not participated in this proceeding before the AGC Board, it is plain that the IBEW did not voluntarily agree to the AGC Board as arbiter (R. 30-31).[21]

Finally, the Teamsters attack the Board's jurisdiction to determine the "hauling to point of use" dispute by asserting that their coercive refusals in April to perform work (prior to the filing of REECO's charges) occurred solely in support of their position in the composite staffing dispute and not in support of their hauling to point of use demand. Since the Board's jurisdiction to commence a Section 10(k) proceeding depends on the filing of a charge, the Teamsters contend that the Board had no jurisdiction to determine the hauling to point of use issue when all the Teamsters' economic conduct with respect thereto took place in May, after the filing of REECO's charge. The Teamsters do not dispute the rule of the *Fant Milling* case[22] in which the Supreme

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[21] It should also be noted that Section 10(k) required the parties to submit to the Board satisfactory evidence of the voluntary adjustment of the dispute or agreed upon methods for such adjustment within 10 days after notice of the filing of REECO's charge with the Board. Should the Court agree, therefore, with the Teamsters' contention regarding the IBEW's intervention in the District Court action, such intervention occurred too late to bar the Board's jurisdiction in the Section 10(k) proceeding.

[22] *N.L.R.B.* v. *Fant Milling Co.*, 360 U.S. 301, 307, 309.

Court held that a charge merely sets in motion the investigatory machinery of the Board and that the Board has jurisdiction to consider conduct subsequent to the filing of the charge of the same class as, or related to, the pre-charge conduct. What the Teamsters thus argue is that the hauling to point of use work is "unrelated" to the composite staffing tasks (R. 68-69).

The Board properly rejected the Teamsters' argument. With respect to the Teamsters' assertion that all coercive conduct prior to the filing of REECO's charges was solely in support of the composite staffing work, the record demonstrates the contrary. Thus Carter's April 22 strike request telegram to the Joint Council of Teamsters and Teamster International officials complained of REECO's "using people other than Teamsters to handle *and haul* material" (italics added, R. 35; T. Exh. 41). And when Carter submitted grievances to the AGC Board on March 30, he did not attempt to separate the two disputes; rather he complained of alleged contract violations by REECO because IBEW members were performing "handling, warehousing, and *transporting*" of materials (italics added, R. 35; T. Exh. 13). That the Teamsters' coercive conduct in April was not confined to the composite staffing issue is further demonstrated by the wording of the amended charges filed by REECO on May 11: "the purpose and object [of the Teamsters' refusals] being to force and require REECO to assign the work of (a) unloading the material . . . and (b) the transporting of such materials

from the point of such unloading . . . to [the] point of installation . . ." (R. 6). At the time of these coercive activities, therefore, the Teamsters attempted to force a change in assignments of both kinds of work. The Teamsters' present version of what motivated these refusals, we submit, is no more than an afterthought designed for the purpose of avoiding responsibility for the Union's unlawful conduct.

Finally, we submit that it is patently artificial for the Teamsters to contend that the work of unloading, checking and placing of electrical materials in the forward compounds is of a different class and unrelated to the work of transporting these same materials from the forward compounds to the points of use. Considering the vast size of N.T.S. and the very different types of work engaged in by the separate crafts, it was surely not unreasonable for the Board to conclude that the job of unloading and checking of materials at one point was related to the work of transporting them to another point.

III. The Board's Order Is Valid and Proper

As stated above, the Board's order essentially requires the Teamsters to cease and desist from the unfair labor practices found, as recited in the Board's Conclusions of Law (R. 37-39, 57-58). The Teamsters challenge these underlying conclusions and therefore seek modification of the Board's order (R. 69-71). The record, however, supports the Board's conclusions and its remedial order, as we now show.

The Board found that the Teamsters' refusals to deliver materials from April 24 to April 29, 1964, was not confined to electrical materials destined for forward electrical compounds. Although the record conflicts on the question of whether Carter broadly instructed Teamsters on or about April 20 to refuse deliveries to electrical and nonelectrical compounds, the Board resolved this conflict in favor of the broad interpretation of his instructions for two reasons: Carter's subordinates so interpreted the instructions; for example, Teamster steward Pat Gwinn informed REECO's supervisor William Boggs on April 27 that the Teamsters "would not deliver material to any compound where there was not a Teamster clerk to receive it, or a Teamster forklift operator to unload it" (R. 24-25; 10(l) Tr. 138-141, 124-125, 129-130); in addition, the record is clear that the Teamsters did not limit their refusals to electrical materials for they ceased deliveries intended for plumbers, carpenters, laborers, drillers and ironworkers (R. 25-26; Tr. 270, 282-283, 10(l) Tr. 139-140). Further, Carter met with REECO officials on April 28 and related that he had instructed his drivers not to unload materials in the forward compounds unless Teamsters unloaded the vehicles, thus failing to restrict his remarks to the electrical compounds (R. 26-27; Tr. 307-310, 377-378, 392-393). Finally, on May 1, after the AGC Board decision had issued, Carter took the position with REECO officials that the AGC Board's conclusions applied to "all forward compounds . . . , that [REECO was] to install warehouse clerks and all hauling from these compounds were to be done by

Teamsters" (R. 27; 10(l) Tr. 150-151).[28] The Board could thus reasonably conclude that the Teamsters intended to and in fact did refuse to deliver materials to both electrical and nonelectrical compounds and that they should be required to cease and desist therefrom.

Contrary to another Teamster assertion, the record shows that some employees other than IBEW members worked at the forward electrical compounds. Thus, when materials are unloaded at these electrical compounds, laborers, and if a forklift is needed, operating engineers, sometimes assist in the unloading (R. 20; Tr. 2532-2533, T. Exh. 13, Finding of Fact 2). It was proper, therefore, for the Board to conclude (and to require the Teamsters to cease and desist therefrom) that the Teamsters engaged in coercive conduct with an object of forcing REECO to assign Teamsters to the electrical compound jobs, with the necessary consequences of reducing work available for IBEW members, laborers or operating engineers.

Finally, it was reasonable for the Board to insert the phrase "or any other person" wherever REECO is mentioned in the order. Since the order is tailored to the precise facts of this dispute at N.T.S., a dispute which is unique to the setting of N.T.S. (see pp. 3, 8, *supra*), the addition of the words "any other person" simply means that the Teamsters cannot use coercive and unlawful means to force or require any

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[23] The AGC Board's clarification issued on May 7 and stated that the "award . . . applies solely to work being performed by the Electricians and no other craft" (R. 27; T. Exh. 15).

successor employer to REECO at N.T.S. to assign the work in dispute to the Teamsters. Inclusion of the quoted phrase in the Board order is proper where, as in this case, the party against whom the order is directed has demonstrated a proclivity to violate the Act in pursuance of an overall plan to compel the assignment of work to employees that it represents. See *N.L.R.B.* v. *Express Publishing Co.*, 312 U.S. 426, 437; *Truck Drivers & Helpers Local Union 728* v. *N.L.R.B.*, 332 F. 2d 693, 697 (C.A. 5), cert. denied, 379 U.S. 913; *Bakery Wagon Drivers, etc. Local 484* v. *N.L.R.B.*, 321 F. 2d 353, 358 (C.A.D.C.); *N.L.R.B.* v. *Local 138, International Union of Operating Engineers*, 377 F. 2d 528-530 (C.A. 2).

CONCLUSION

For the reasons stated, it is respectfully submitted that a decree should be entered enforcing the Board's order in full.

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November 1967.

Certificate

The undersigned certifies that he has examined the provisions of Rules 18 and 19 of this Court and in his opinion the tendered brief conform to all requirements.

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APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Secs. 151, *et seq.*) are as follows:

Unfair Labor Practices

Sec. 8(b) It shall be an unfair labor practice for a labor organization or its agents—

* * * *

(4) (i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is:

* * * *

(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work:

Limitations

Sec. 10(k) Whenever it is charged that any person has engaged in an unfair labor practice within the

meaning of paragraph (4) (D) of section 8(b), the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed.

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